

# Monitoring Performance

Monitoring the performance of the contractor is a key function of proper contract administration. The purpose is to ensure that the contractor is performing all duties in accordance with the contract and for the agency to be aware of and address any developing problems or issues.

Small dollar value or less complex contracts normally require little, if any, monitoring. However, that does not preclude the possibility of more detailed monitoring if deemed necessary by the agency. Conversely, large dollar contracts may need little monitoring if the items or services purchased are not complex, and the agency is comfortable with the contractor's performance and the level of risk associated with the contract.

## **Contract monitoring may be viewed as:**

- A preventive function.
- An opportunity to determine the contractor's need for technical assistance.
- A valuable source of information concerning the effectiveness and quality of services being provided. <sup>(5)</sup>

Two areas of contract monitoring are discussed in this chapter including:

1. Determining what to monitor and the type of monitoring.
2. How to use the results of monitoring reviews.

## **1. Determining what to monitor.** Consider the following questions when determining what to monitor:

- How will the agency know it is receiving what it paid for?
- How will the agency know that the contractor is complying with the terms of the contract?
- How will the agency know the contract is complete and determine closure?

Review the statement of work and other contract terms, including contractor compliance requirements. All of these requirements are deliverables that the contractor agreed to when the contract was executed or the purchase order was issued. Design the monitoring program to focus on items that are most important. Generally, this means to focus the monitoring on the outcomes that result from the contract. For example, consider if the agency would be concerned regarding the following issues:

- Eligible taxpayers do not receive the services they should;
- Taxpayers receive less service for which they are eligible;
- Taxpayers receive the wrong services;
- Service priorities for eligible taxpayers are inappropriate;

- Services cost more than they should;
- Money is spent on non-allowable costs (i.e. gifts, etc.);
- The contractor wastes money or does not protect the assets purchased with tax dollars or;
- The contractor inaccurately reports their progress.
- The contractor does not make corrections to goods and/or services identified as not meeting requirement.

Consider the effect that the contract payment methodology has on what needs to be monitored. For example, if payment is based on a firm fixed price (a specific amount of money for a unit of service), it is not necessary to verify contractor's expenses as they are not relevant to this type of contract. Consider buying a box of pencils. The agency knows what they are buying and the cost per pencil. It is irrelevant what the contractor pays for travel or advertising as the agency pays a firm fixed price for the pencils regardless of the contractor's expenses. Under a firm, fixed price contract, the agency should ensure that:

- The number of units billed is the same as the number of units received.
- The quantity and price agree with the contract amounts.
- The units meet or exceed the contract specifications.

If an agency receives grant money to pay for a contract, the agency must consider the nature of the relationship with the contractor. Is the relationship a vendor relationship or a sub-recipient relationship? See OMB Circular A-133, Section 210 (<http://www.whitehouse.gov/omb/circulars/a133/a133.html>) for guidance on relationship determination. If the relationship is that of a sub-recipient, then federal guidelines and cost principles must be followed. The Uniform Grant Management Standards published by the Governor's Office (<http://www.governor.state.tx.us/divisions/stategrants/guidelines/view>) will provide guidance as well.

If the contract is a cost reimbursement contract wherein the agency pays for the contractor's cost plus a percentage of overhead and profit, the agency needs to consider the following monitoring reviews:

- Was the item billed really purchased by the contractor?
- Was the item billed used for the purpose of the contract?
- Was the item necessary and reasonable for the purpose of the contract?
- Was the item of the quality and quantity specified in the contract?
- Was the item duplicated in either overhead or profit?
- Was the item listed in the contractor's budget and approved by the agency?

The agency must review the contract to see how the costs are reimbursed. Many contracts require that all costs must be included in the original budget provided by the contractor and approved by the agency. In some cases, the contract may specify that certain costs such as the purchase of a vehicle or use of a subcontractor require approval by the agency prior to purchase.

## Monitoring Types

The following section explains how to establish expectations so individuals responsible for contract monitoring and the contractors all understand what will be monitored and the criteria used to evaluate contractor performance.

There are different types of monitoring available, including but not limited to:

## Site Visits

More complex contracts and contracts that the agency perceives as having a higher degree of risk may require both reviews and visits to the contractor's facilities to ensure progress is in accordance with the contract schedule. Site visits can be used to verify actual performance against scheduled or reported performance. These can ensure the contractor is dedicating sufficient resources and appropriate personnel to the contract. Site visits reinforce the importance of the contract to the contractor, as well as provide the opportunity to enhance communications with the contractor.

To perform a site visit, the agency should:

A. Develop a comprehensive and objective site monitoring checklist which:

- Focuses on the outcomes, but also includes compliance requirements. Site monitoring criteria should reference the applicable contract requirement.
  - Assess contractor performance the same way. Are any errors considered minor or inconsequential? If so, these must be outlined up front so that the contract is monitored consistently. Clarify areas where monitors may exercise judgment.
  - Specify the sample size to be reviewed, but do not disclose specifics to the contractor. For example, an agency may state it will review case documents for the month of August, but should not disclose it will be reviewing case #XXX.
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- **Site Visit (full and limited scope).** Full scope site visits are typically scheduled visits to the contractor's place of business. They are based on risk assessment and cover a broad range of contract compliance and performance issues. Limited scope site visits typically focus on a particular problem. Examples of some typical reasons for considering a limited scope site visit include, but are not limited to:

- o Contractor is responsible for administering funds from two sources and one source has noted serious problems with the way the contractor used the funds.
- o Other contractors have experienced problems in a specific area and there is an indication this contractor might be experiencing the same problem.
- o Inconsistencies in the expenditure draw requests are identified and clarification from source documents is necessary.
- o Contractor has provided a corrective action plan for a problem, but the agency is not certain the proposed solution will resolve the problem.

#### B. Documentation Requirements:

- Allow space on the checklist (or on a separate document) to document the results of the site visit. For example, if the site monitor is to review 10 case files, then the documentation must include the identification of the files monitored, e.g. the case number, the staff members tested for salary allocations, the expenditures reviewed.
- Describe the documentation required for the site monitor to bypass an area, i.e. "No problems identified last year with the compliance requirement - not monitored this year." This allows agencies more time to review higher risk areas.

#### C. Sampling and Population:

- Ensure the population is complete by including all files relevant to the contract. The contractor should never be the one to select the samples for review.
- If the contractor submits the names of the clients as part of the normal expenditure draw, then the sample can be selected from the client list. Ensure that the clients on the list are paid for by the agency.
- If the contractor cannot locate the sample item selected, it may or may not indicate a problem. Before agreeing to substitute an alternate file, consider the circumstances of the "lost" sample item and determine if the explanation is reasonable or if the site monitors suspects that the contractor did not want the site monitor to see the file.

#### D. Tailor the site monitoring checklist for each contractor. While there will be standard items the agency will review for all contractors, each contract/contractor should be reviewed for specific site monitoring requirements unique to that contract/contractor. In addition, consider the following:

- Review specific contract requirements to determine if these merit site monitoring.
- Look for items that fall just below an amount requiring additional approval.

- Consider problems the contractor has had in the past or what is likely to cause problems for this contractor. Are parts of the contract new to the contractor? For example, the contractor may be providing the same services but to a different population during this contract.
- What types of items do not need to be monitored and why? For example, if the contractor uses an information database the agency has tested under previous contracts, then the risk is low in this area and the database may not need to be reviewed.
- Has another agency or another part of the same agency conducted a review? For example, if the agency provides home delivered meals to people with disabilities, and another agency provides the same services, both agencies could coordinate the reviews of shared contractors.

E. Site Monitoring Reports. The report of the site visit should stand by itself and serve as a record of the site monitoring work. A copy of the report should be sent to the contractor and any others who may benefit from the report.

Even if the contractor corrects a problem in front of the site monitor, the site monitor is obligated to include the problem in the report. This will serve as an indicator to follow up on the problem on future visits to ensure it was corrected.

Include what has been learned during this site visit in the next risk assessment and in future contract requirements. If the site monitor recommends changes for the next contract, include the recommendations in the site monitoring reports. Also include any contractor recommendations for the next contract.

**Desk Review.** Typically these are agency reviews of reports submitted by the contractor to the agency. Agencies should review the reports for the following:

- o Compare the actual performance against the contract requirements. Is the contractor performing in accordance with the contract requirements?
- o Compare actual expenditures to the approved budget. Is the contractor following their approved budget plan?
- o Compare the current period to prior periods. Are there any unexplained trends? Is the contractor performing work significantly different from the last period or the last year?
- o Compare what the current contractor is doing in comparison with other contractors performing similar work.
- o Compare the relationships between key components of the report such as:
  - The cost per unit of service or the percentage of the fees charged to the program;
  - The change in variable costs compared to the units of service provided; and
  - Reported salaries match staffing plan.

- o Compare the report with what is known about the contractor's operating environment. Did a weather emergency in the area recently increase the cost of construction supplies or is the cause of a temporary reduction in services provided?

**Expenditure Document Review.** These are reviews of contractor invoices and expenditure draw requests to determine if the rates and services are the same as allowed by the contract. Determine if the supporting documents such as cost reports, third party receipts for expenses, detailed client information, etc. adequately support the request for payment. If the contractor consistently provides incorrect invoices and/or the supporting document is insufficient to support the request, then additional monitoring such as an on-site visit may be necessary.

**2. Using monitoring review results.** Monitoring reviews, audits, and investigations should be routinely followed up to:

- Ensure corrective actions have been taken;
- Identify common problem areas that might require training; and
- Improve future contracts.

Agencies should design a system that includes criteria and defined follow up actions. The goal of follow up should be to bring the contractor back into compliance with the contract requirements. Follow up is essential as the problem will not correct itself simply by identifying it and including it in the monitoring report.

Monitoring results should also be used to improve the contract requirements for future contracts. If there are unnecessary restrictions or insufficient restrictions, this is the time to make a note of the recommended changes so future contracts can incorporate the changes.

Information on inspection, testing and acceptance of common goods and services.

(<http://www.window.state.tx.us/procurement/pub/manual/2-42.pdf>) can be found in the CPA Procurement Manual.

## Reporting

Reporting includes a contract administrator reporting to executive management, the contractor reporting to the contract administrator, and the state agency reporting to the Texas Procurement and Support Services. There are generally three (3) categories of reports: status reports, activity reports, and Vendor Performance Reports. All types of reporting serve useful functions.

- **Status Reports** – Describe the progress of the work. The content of the status report should be consistent with and track the organizational structure of the statement of work, i.e. phases, segments, deliverables and products. A status report should describe what work is complete and what work is pending and that status should be contrasted against the contract schedule. Only work that has been verified as completed or accepted should be categorized as complete. If there are any unresolved issues that the agency is contractually obligated to resolve, those issues should be included in the status

report and a resolution should be requested. If the scope of work has changed during the contract (by written contract amendment), insist that status reports track the original contract schedule, not a revised contract schedule, unless the amendments provides for a revised contract schedule. If status is tracked against a revised schedule, there is a risk that the schedule will continually change and the status report will be rendered meaningless.

If the contract does not provide for periodic status reports, the agency should ensure that sufficient progress is being made by the contractor. This may be accomplished by requesting a status update from the contractor or a site visit to view the progress.

- Activity Reports – Describe any activity on the project; project activity is not the same as a status report. A project may have a great deal of activity without making substantive progress. On the other hand, activity reporting can be a core feature of contract management. For example, a contractor payment in an outsourcing contract may be based on the number of completed transactions. In this example, activity reporting is critical to contract administration.
- Vendor Performance Reports - Upon completion of a procurement against the contract, the state agency utilizing it files a Vendor Performance Report, as required by rule (34 TAC §20.108(b). This is done through the TPASS Web Portal, and facilitates reporting and resolution of issues between agency and vendor. In addition, it provides an evaluation resource for use by state agencies in subsequent solicitation awards.

#### Monitoring by Third Parties

In some instances the obligation of monitoring the progress of a contract is assigned to another contractor. This is also known as independent oversight. For example, in the case of a construction contract, the task of ensuring progress in accordance with the contract may be performed by the architectural firm that provided the construction plans. For highly technical work, consultant subject matter experts may perform monitoring services independently or in conjunction with agency staff.

#### Risk Management

The primary approach to managing risk after a preliminary risk assessment level is to document the initial perception of the level of risk and or specific risks that are identified, identify and assign experienced staff resources to assist in the contract management process.

A preliminary risk assessment should be conducted to make an initial determination about the level, type and amount of management, oversight and resources required to plan and implement the contract from beginning to end. Simply put, as the risk associated with a particular procurement increases, the level and degree of executive management's sponsorship, participation and oversight should be increased by a corresponding level. See Chapter - 2 Planning for risk assessment.